## Remarks

Claims 6, 7, 13, 14, 16, 18-20, 25-33, 36, 38-40 are pending, of which claims 6, 7, 13, 14, 25-33, 38 and 39 have been withdrawn from consideration. Claims 1-5, 8-12, 15, 17, 21-24, 34-35 and 37 have been canceled without prejudice. Accordingly, claims 16, 18-20, 36 and 40 are under consideration by the US Patent Office (PTO) after entry of the amendment. Claim 16 has been amended. The term "immediate release composition" derives from the application as filed, as it is recited as such in the application. Claim 40 has been added and is supported by the specification. No new matter is entered by this amendment.

### § 102 Rejection over Curtet

Claims 1, 8 and 34 are rejected under 35 U.S.C. § 102 over Curtet.

These claims have been canceled without prejudice, rendering the rejection moot.

### § 103 Rejection of Curtet in view of Kerč

Claims 1-5, 8-12, 15-24 and 34-37 are rejected under 35 U.S.C. § 103 as being obvious over Curtet et al (U.S. Patent No. 4,895,726) in view of Kerč et al (U.S. Patent No. 6,042,847).

Applicants respectfully traverse the rejection and respectfully submit that neither Curtet nor Kerč disclose or suggest the claimed fenofibrate tablet, with an immediate release formulation, where the required daily dosage dose is lower than 200mg.

Curtet provides a composition which is a co-micronized fenofibrate and solid surfactant. Curtet describes how to obtain a powder, and put into capsules. Curtet at column 1, lines 67-68. Curtet provides a specific process (column 2, lines 5-20) having the following steps:

(i) mixing and co-micronizing fenofibrate and a solid surfactant;

(ii) adding lactose and starch to the mixture; and converting the whole to granules in the presence of water;

(iii) drying the granules until they contain no more than 1% water;

(iv) grading the granules;

(v) adding polyvinylpyrrolidone[1] and magnesium stearate to the graded granules; and

(vi) filling gelatin capsules with the mixture.

Curtet describes a process that produces a dry powder, where the powder is placed into capsules. Because Curtet places emphasis on the final size of the mixture, one skilled in the art would understand Curtet to teach only the disclosed process, whereby a powder is obtained and granulated.

Curtet discloses a daily dosage of 200 mg (column1, lines 50-51, and column 4, lines 34-35). Curtet compares the 200 mg formulation to the standard 300 mg formulation, and shows that the 200 mg dosage form is bioequivalent to the 300 mg dosage form. Hence, Curtet fails to disclose a daily dosage (i) in the form of a tablet and (2) where the dose is lower than 200 mg.

According to the PTO, Curtet "*do not teach the instant claimed percentages of drug but do teach effective amounts of fenofibrate, whereby the fenofibrate is present in an amount of 200 mg par therapeutic unit. Moreover, the Examiner points out that generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art, unless there is evidence indicating such concentration [...] is critical.*"[2] Then PTO refers to *In re Aller* 220 F.2d 454 (1955) and concludes that "*In this instance, the prior art teaches the use of the same drug (fenofibrate), employed once a day and used in a similar amount to achieve enhanced bioavailability of the drug.*"[3]

The PTO asserts that Applicants failed to show the criticality of the claimed amount and dosage format. Applicants respectfully disagree for the reasons that follow.

Curtet corresponds to EP-A-0330532 which is discussed in the specification at page 2, lines 1-20 and Examples 2-4. Curtet corresponds to Lipanthyl® 200M in Figures 1 and 2 in the application.

The dissolution medium and conditions in the pending claims are a rotating blade method at 75 rpm, where the dissolution medium is water with 2% polysorbate 80 or water with 0.025 M

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[1] Curtet's working examples all use cross-linked polyvinylpyrrolidone.
[2] Office Action of December 5, 2006, at page 6.
[3] Office Action of December 5, 2006, at page 6.

sodium lauryl sulfate. In contrast, Curtet uses a rotating vane or continuous flow cell where the dissolution medium is water with 0.1 M sodium lauryl sulfate. The dissolution medium of Curtet comprises much more sodium lauryl sulfate (i.e., surfactant) than the dissolution medium of the claimed invention. Having more surfactant will necessarily enhance dissolution. Accordingly, it is necessary to compare the composition described in Curtet and the claimed composition using the same method. This was done in the present application.

Applicants have shown in Example 2 and Figure 1 of the application that the claimed invention has an unexpectedly superior dissolution profile compared to Lipanthyl® 200M, as described by Curtet. In other words, the claimed amount is critical. For the PTO's convenience, a comparison of the dissolution profile recited in the claims with the dissolution profile of Curtet (i.e., Lipanthyl® 200M) is shown in the Table below.

| Time | % Dissolution of **Claimed Invention** described in Specification | % Dissolution by **Inventive Example** shown in Example 2 of the Application | % Dissolution by **Curtet** as Lipanthyl® 200M shown in Example 2 of the Application |
|---|---|---|---|
| 30 minutes | at least 75% | 95.9% | 54.9% |

As shown from the summary above, Example 2 and Figure 1 in the application demonstrate that Curtet does not have a dissolution profile like the one which can be achieved with the claimed fenofibrate tablet having an amount of fenofibrate less than 200mg. In fact, the claimed tablet has an unexpectedly superior profile when compared to Curtet's Lipanthyl® 200M.

Applicants also refer to the Declaration under 37 CFR § 1.132 by Pascale Blouquin (the Blouquin Declaration)[4] to show that the presently claimed tablet has unexpectedly superior properties when compared to the dissolution data in the Laboratory Notebooks submitted with the Blouquin Declaration. Blouquin Declaration at ¶ 14. A comparison of the pending claims, the inventive example in the present application and the dissolution data from Lot No. 2177 in the Laboratory Notebook No. 1 at Bates Number Fournier 1001569 is set forth in the table below. Blouquin Declaration at ¶ 14.

[4] The Blouquin Declaration was submitted in the Information Disclosure Statement filed May 6, 2006.

| Time | % Dissolution Achieved with Tablets of the **Pending Claims** | % Dissolution by **Inventive Example** shown in Example 2 of the Application | % Dissolution by **Curtet** as Lipanthyl® 200M from Lot No. 2177 described in the First Blouquin Declaration and shown in Lab Notebook No. 1 at Fournier No. 1001569 | % Dissolution by **Curtet** as Lipanthyl® 200M from Lot No. 2177 described in Example 2 of the Application |
|---|---|---|---|---|
| 30 minutes | At least 75% | 95.9% | 67.7% | 54.9% |
| 60 minutes | -- | -- | 78% | -- |

The claimed tablet allows achieving 75% dissolution in 30 minutes. The data in the Laboratory Notebook submitted in the Information Disclosure Statement herewith shows that it takes 60 minutes for Curtet's Lipanthyl® 200M to achieve a dissolution of 78%. Blouquin Declaration at ¶ 15. In other words, it takes almost twice as long for Curtet's Lipanthyl® 200M to achieve a dissolution that the claimed fenofibrate tablet can achieve in 30 minutes. Blouquin Declaration at ¶ 15. In view of these results, it is Ms. Blouquin's opinion that the claimed invention is superior to Curtet's Lipanthyl® 200M. Blouquin Declaration at ¶ 15.

Applicants respectfully submit that Curtet does not disclose or suggest a composition that exhibits such a dissolution profile with the claimed amount of fenofibrate, and that Curtet provides no motivation or suggestion to produce the claimed amount of fenofibrate in the composition, let alone the dosage being in the form of a tablet. In fact, the dissolution profile that can be obtained with the claimed tablet is unexpectedly superior when compared to Curtet. Accordingly, Curtet cannot render the claimed invention obvious.

Curtet fails to provide any motivation to modify the process. Curtet is solely concerned with co-micronization, and provides no guidance as to the relevancy of the dosage form of the drug. Hence, Curtet does not provide the required motivation to modify the granulates into a compressed tablet. Further, one skilled in the art would expect, based on the Curtet disclosure, that a compression step would make the powder of Curtet less available to the environment and would expect longer dissolution times, and thus a lower bioavailability. Curtet made the point

that its invention is a co-micronized mixture, available as a powder. Thus Curtet teaches away from the compression step that would provide a tablet.

Kerč does not cure the deficiencies of Curtet. Kerč does not provide any motivation or suggestion to modify the dosage form of Curtet to arrive at the claimed tablet. This is particularly the case since Curtet teaches relatively fast release fenofibrate compositions when compared to the sustained release compositions described by Kerč. Kerč teaches away from the claimed invention because Kerč teaches a three-phase pharmaceutical formulation with controlled release properties. Kerč does provide a constant and controlled release formulation (*see* the title and the specification, e.g., the first paragraph in "Technical Field of the Invention"). One skilled in the art would not combine these references since Kerč's proposed modification (i.e., extended release) would change the principle of operation of Curtet's composition (i.e., relatively faster release than Kerč). *See* MPEP at 2143.02. One skilled in the art would not combine references which have opposite teachings from each other.

Further, the instant application allows a lower inter-patient variation. This is stated at the conclusive part of example 2, in relation with figure 1.

> *"The results obtained are shown graphically in FIG. 1, on which the percentage of dissolution is shown, the observed standard deviation being indicated between brackets. These results clearly show that the compositions according to the invention have a dissolution profile which is distinctly better than that of the prior art compositions. These results also clearly show that with the compositions of the invention, the standard deviation observed is distinctly lower than is the case with prior art compositions."*

The invention, by providing an immediate release tablet with a dosage of less than 200 mg thus provides the further advantage that the inter-patient variation is reduced. A reduced inter-patient variation is a showing that a lesser amount of drug is needed[5].

The present invention is directed to a tablet which is an immediate release formulation with less than 200mg, and the prior art does not teach or suggest the instant invention. In view of the above, Applicants respectfully submit that the presently claimed invention is unobvious

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[5] Indeed, to be sure to administer a minimum amount of drug to a patient, one will administer at least said amount plus the standard deviation. With a lower standard deviation, a lower amount of drug is administered while still being sure that the required amount will be made available in the body.

over Curtet in view of Kerč and respectfully request that the rejections under § 103 be withdrawn.

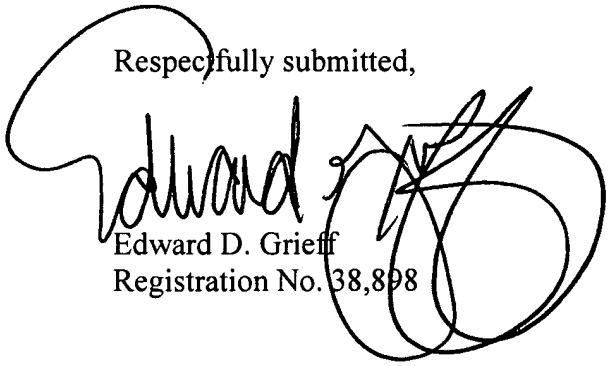
**Information Disclosure Statements**

Applicants respectfully request that the PTO consider the materials cited in the Information Disclosures Statements filed May 8, 2006, and June 19, 2006. For the Examiner's convenience, Applicants attached hereto a copy of the PTO-1449 Forms and respectfully request that the Examiner return an initialed copy with the next communication from the Office.

**Summary**

An early and favorable reconsideration and allowance of claims 16, 18-20, 36 and 40 is respectfully requested.

Respectfully submitted,



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